IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.945 of 2005
Date of Decision: 10.9.2007

Kulbushan Jain

.... Appellant.

Versus

The Haryana House Building Co.op. Society, Rohtak & Ors.

.... Respondents.

CORAM: HON'BLE MR. JUSTICE PERMOD KOHLI

Present:- Mr.P.L.Sanghi, Advocate, for the appellant.

Mr.Rajinder Goel, Advocate for the respondents.

Permod Kohli J. (Oral)

This Regular Second Appeal is directed against the judgment and decree dated 5.2.2005 passed by the Additional District Judge, Rohtak in Civil Appeal No.29 of 2002.

The facts are that one Parkash Chand, was owner of the land measuring 20 Bighas 12 Biswas situated in the revenue estate of Rohtak, as per Jamabandi for the year 1972-73. Parkash Chand died leaving behind his four legal representatives, namely, Kailash Wati widow, Kulbhushan Jain son, Malti Prabha and Swarn Lata @ Suman as two daughters. Kailash wati also died inestate and her share also devolved upon two daughters and son named above. The daughters entered into lease deed in favour of the plaintiff Haryana House Building Corporative Society, Rohtak on 15.10.1985. This lease was for a period of 30 years. Subsequently, two daughters who are defendant Nos. 1 and 2 in the suit, sold land measuring 8 Bighas 6 Biswas in favour of the plaintiff, through two registered sale deeds

dated 10.6.1986. On the death of Parkash Chand two mutations of inherence were entered as mutation No.9806 and 9807 in favour of the legal heirs of the Parkash Chand for 1/4th share in favour of each of the legal heir. Kulbhushan Jain challenged mutations and it was during the pendency of these proceedings that sale deeds were effected by defendants No.1 and 2 in favour of the plaintiff. It appears that subsequently these mutations were set aside and in revision before the Commissioner Kulbhushan entered into compromise with his two sisters. Aggrieved of the action, plaintiff filed a suit for declaration and permanent injunction claiming the right over 8 Bighas 6 Biswas on the strength of the sale deed. The trial Court vide its judgment and decree dated 31.1.2002 passed a decree for declaration in favour of the plaintiff with respect to 6 Bighas 17 Biswas and refused to grant any injunction. Plaintiff was also declared to be owner in symbolic possession of the aforesaid land.

Aggrieved of the judgment and decree of the trial Court, plaintiff filed an appeal in the court of Additional District Judge, Rohtak. This appeal of the plaintiff has been allowed by the Lower Appellate Court vide its judgment and decree dated 5.2.2005, wherein the plaintiff was declared owner in possession of the agriculture land measuring 8 Bighas 6 Biswas and the defendants are perpetually restrained from interfering into the ownership and possession of the plaintiff. The Lower Appellate Court found that the sale deed executed by defendants No.1 and 2 in the suit, whereby the land measuring 8 Bighas and 6 Biswas, was transferred to the plaintiff, has not been challenged. The Lower Appellate Court also found that the mutation does not confer any independent right and as such the sale

deeds should have been challenged. The Trial Court's finding that the defendants No.1 and 2 could only sell 6 Bighas 16 Biswas, is not sustainable. The trial Court also found that the compromise dated 21.5.1987 entered into between the defendants No.1 and 2 and defendent No.3 is also invalid and not binding on the rights of the plaintiff, who was not party to the said compromise. These findings of the Lower Appellate Court, are not challenged before this Court in the present appeal.

I have heard learned counsel for the parties. It is admitted that the sale deeds have not been challenged. The two sisters were co-owners, even if they have sold more than their share and the sale deeds having not been challenged, no relief can be granted to the present appellant.

The findings of the Lower Appellate Court can not be said to be perverse or contrary to law. No substantial question of law arises. This appeal has no merits.

Dismissed.

September 10, 2007 (Permod Kohli)
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